BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD

CENTRAL PUGET SOUND REGION

STATE OF WASHINGTON

BRANDI BLAIR, MATTHEW BLAIR, BRETT BLAIR, JAMES BLAIR, LOWELL ANDERSON, DOUGLAS HAMAR, AND CHAD MCCAMMON, Petitioners, v. CITY OF MONROE, Respondent.	**CASE No. 14-3-0006c** **ORDER ON CITY'S DISPOSITIVE MOTION AND PETITIONERS' MOTIONS TO SUPPLEMENT**

I. CITY'S DISPOSITIVE MOTION

This matter came before the Board on Respondent City of Monroe's dispositive motion timely received on April 22, 2014. The City challenged (1) the GMA standing of Petitioners Brandi Blair, Matthew Blair, Brett Blair and James Blair (the Blair Petitioners) for failure to participate in the legislative process of Ordinance Nos. 022/2013 and 024/2013, and (2) the SEPA standing of the Blair Petitioners for failure to exhaust their administrative remedies by commenting on or otherwise challenging the September 27, 2013 FEIS.[1] The City also challenged the SEPA standing of Petitioners Hamar and McCammon (the Hamar/McCammon Petitioners) for failure to exhaust their administrative remedies by appealing the September 27, 2013, FEIS. On May 2, 2014, the Board received separate Responses from the Blair Petitioners and from Hamar/McCammon Petitioners. The City replied on May 9, 2014.

As set forth below, the City's motion to dismiss the Blair Petitioners' GMA challenge is **denied**. The City's motion to dismiss the Blair Petitioners' SEPA challenge for lack of

[1] Respondent's Dispositive Motion Regarding Standing (April 22, 2014) at 1-2.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

standing is **granted.**[2] City's motion to dismiss the Hamar/ McCammon SEPA challenge is **denied.**

II. DISCUSSION OF DISPOSITIVE MOTIONS

WAC 242-03-555 allows for dispositive motions on a limited record to determine the standing of a petitioner to bring a challenge.

A. Motion to Dismiss Blair Petitioners for lack of GMA standing

Requirements for GMA standing

Requirements for GMA standing are set out in RCW 36.70A.280(2), which provides in relevant part:

> A petition may be filed only by: . . . (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested . . . or (d) a person qualified pursuant to [the Administrative Procedures Act, as set out at] RCW 34.05.530.[3]

As the Central Board explained in *Lowen,* "These two means of obtaining standing are referred to as Participation (or Appearance) standing and APA standing."[4]

RCW 36.70A.280(4) further explains:

> To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

---

[2] The Board notes the standing of Lowell Anderson, a co-petitioner with the Blairs, is not disputed by the City.

[3] RCW 34.05.530 reads:

> A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:
> (1) The agency action has prejudiced or is likely to prejudice that person;
> (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
> (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

[4] *Lowen Family Partnership v. City of Seattle*, Case No. 13-3-0007, Order of Dismissal (September 30, 2013) at 2.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Positions of the Parties

It is not disputed that the Blair Petitioners participated in the legislative process that led up to the City of Monroe's adoption of Ordinance No. 018/2012 in July 2012.[5] After the Hearing Examiner found the phased FEIS prepared in conjunction with that ordinance inadequate, the City repealed that ordinance and prepared a new FEIS and ultimately enacted the ordinances challenged in the instant case.[6] The City argues that the 2012 legislative process was distinct from the 2013 process that culminated with the enactment of the challenged ordinances and that no comments received in the 2012 process were considered.[7] The Blair Petitioners counter that the City's own documents consistently list the East Monroe Development Group Comprehensive Plan Amendment and Rezone as "Continued from 2012," using reference numbers from 2011 (CPA 2011-01) and 2012 (RZ2012-01).[8] They argue that the process should be treated as one matter which began with the application submittals in 2010 and culminated in the December 2013 adoption of the ordinances challenged here.[9] The Board notes the City does not deny Blairs' participation in the earlier process. Further, the record reflects the City's representations that the 2013 process was a continuation.

The City next concedes that "many of the comments, submittals, and other materials from the 2012 legislative process were variously analyzed . . . and/or were formally submitted into the legislative record" for the challenged ordinances, but that "there is no evidence" the Blair Petitioners' letter was one of the submittals considered.[10] The Board notes that here it is the City's burden, as the moving party, to prove that the letter was not considered.

The Board finds that the City has not met its burden to show that the Blair Petitioners did not participate in the legislative process.

---

[5] Respondent City of Monroe's Reply Regarding Dispositive Motion (May 9, 2014) at 1; Blair Petitioners' Response to Dispositive Motion (May 2. 2014) at 1.
[6] Respondent's Dispositive Motion Regarding Standing at 3.
[7] *Id.* at 3-4.
[8] *See, e.g.,* Exs. 62, 64, 65, 69, 70, and 71: 2013 Planning Commission Agendas.
[9] Blair Petitioners' Response to Dispositive Motion at 4.
[10] Respondent's Reply Regarding Dispositive Motion at 7.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

The City's motion to dismiss the Blair Petitioners for lack of GMA standing is **denied.**

B. Motion to Dismiss SEPA challenges

Participation Requirements under SEPA

GMA standing does not automatically bestow SEPA standing upon a petitioner.[11]

WAC 197-11-545 (2) indicates the effect of not submitting comments to the lead agency during the SEPA comment period:

> (2) **Other agencies and the public.** Lack of comment by … members of the public on environmental documents, within the time periods specified by these rules, shall be construed as lack of objection to the environmental analysis, if the requirements of WAC 197-11-510 [Public Notice] are met. (emphasis added)

As this Board noted in *Shoreline III and IV:*[12]

> One of SEPA's purposes is to ensure complete disclosure of the environmental consequences of a proposed action before a decision is taken.[13] Participation and objection to the environmental analysis is therefore a prerequisite to review of agency SEPA compliance.[14]

As explained by the Pollution Control Hearings Board:

> Participation in public hearings, or commenting through the environmental review process are in some circumstances the only administrative remedy available to a party and thus are the forums in which exhaustion of remedies must occur in order for the party to later make a claim. See, *Citizens v. Mount Vernon*, 133 Wn.2d at 869. The very language of WAC 197-11-545(2) that "lack of comment" shall be construed as "lack of objection" to the environmental analysis assumes that a comment period is part of an

---

[11] *Master Builders and Brink v. Pierce Co.*, 02-3-0010,Order on Motion to Dismiss SEPA claims (October 20, 2002) at 5.
[12] *Shoreline III and IV*, CPSGMHB Coordinated Case Nos. 09-3-0013c and 10-3-0011c, Order on Dispositive Motions (January 18, 2010) at 6.
[13] *Kitsap County v. DNR*, 99 Wn.2d 386, 391 (1983); *King County v. Boundary Review Board*, 122 Wn.2d at 663.
[14] *Citizens v. Mount Vernon*, 133 Wn. 2d 861, 869, 947 P.2d 1208 (1997). See also *Your Snoqualmie Valley v. Snoqualmie*, CPSGMHB Case No. 11-3-0012, Final Decision and Order (May 8, 2012) at 14.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

available administrative process[15] that should be utilized by interested members of the public.[16]

Positions of the Parties

The City asserts that the Blair Petitioners and the Hamar/McCammon Petitioners lack Participation standing under SEPA for failing to comment on or appeal the September 27, 2013 FEIS.[17] The Blair Petitioners respond that they did participate because the SEPA process, as with the legislative process, was a continuation from the 2012 process in which the Hearing Examiner had ruled the City's original phased EIS to be inadequate.[18] In support of their assertion, the Blair Petitioners attest that the SEPA Checklist was not resubmitted because it was the same matter.[19] They also attest that City Planning Department employee Paul Popelka stated that "all previous comments and concerns were address [sic] with the new FEIS issued September 27, 2013," although they do not attach any documentary exhibit containing that evidence. However, the Hamar/McCammon Petitioners attach numerous documents not included in the City's Index due to the City's insistence that the Record only pertains to the 2013 Process.

In light of that fact, and the "he said, she said" record currently before it, the Board finds that the City, as the moving party here, has not carried its burden to show that the Petitioners do not have Participation standing under SEPA.

The Board finds that the City has not carried its burden to show that the Blair Petitioners and Hamar/McCammon Petitioners do not have Participation standing under SEPA.

---

[15] The Eastern and Western Growth Management Boards have interpreted participation in the SEPA comment process as necessary exhaustion of administrative remedies. See *Shoreline III and IV* at 6.
[16] *Spokane Rock Products v. Spokane County Air Pollution Control Authority,* PCHB Case No. 05-127, Order Granting Motion for Summary Judgment (February 13, 2006) at 10.
[17] City's Dispositive Motion Regarding Standing at 4, 7-8.
[18] Blair Petitioners' Petition For Review, Case 14-3-0006 (consolidated to 14-3-0008c)(February 27, 2014) at 2; Blair Petitioners' Response to Dispositive Motion at 7-8.
[19] Blair Petitioners' Response to Dispositive Motion at 11.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Exhaustion Requirements under SEPA

RCW 43.21C.075, entitled "Appeals," is the controlling provision in SEPA regarding standing to challenge environmental review.[20] Subsection (4) provides in part:

> *If* a person aggrieved by an agency action has the right to judicial appeal and if an agency has an administrative appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by state statute. *(emphasis added).*

The *Trepanier* court also noted that the term "person aggrieved" means one with standing to sue under RCW 43.21C.075(4).[21] In *Citizens for Clean Air v. Spokane*, the State Supreme Court reiterated that **RCW 43.21C.075(4) requires petitioners to first exhaust *available* administrative remedies**[22] and described the following four-part test for determining whether the exhaustion requirement bars a SEPA claim:

> (1) whether administrative remedies were exhausted; (2) whether an adequate remedy was available; (3) whether adequate notice of the appeals procedure was given; and (4) whether exhaustion would have been futile.[23]

Positions of the Parties

The Blair Petitioners concede that they did not appeal the FEIS but that co-petitioner Lowell Anderson did so appeal. Further, they state they felt their appeal was futile because they had "participation exhaustion"[24] and Mr. Anderson's appeal was unsuccessful. The City correctly counters that futility may not be based on the subjective belief that further appeals would be futile.[25] Further, the eventual denial of Mr. Anderson's appeal cannot *post hoc* justify the Blair Petitioners' failure to file their own timely appeal.

---

[20] The legislature has the authority to define and restrict standing. *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 29, 785 P.2d 447 (1990). The legislature has imposed standing restrictions in other land use provisions. See for example, the GMA standing provisions at RCW 36.70A.280(2), the Boundary Review Board Statute requirements at RCW 36.93.160(5), or the LUPA standing provisions at RCW 36.70C.060.
[21] *Trepanier v. Everett*, 64 Wn. App. 380, 382, 824 P.2d 524, 1992 Wash. App. LEXIS 66 (Wash. Ct. App. 1992) (citing R. Settle, *The Washington State Environmental Policy Act* § 20(b), at 248 (1987); RCW 43.21C .075(4))
[22] *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 26, 785 P.2d 447 (1990).
[23] *Id.*
[24] Blair Petitioners' Response to Dispositive Motion at 8.
[25] Respondent City of Monroe's Reply Regarding Dispositive Motion at 4.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

The Board finds that the Blair Petitioners did not exhaust administrative remedies.

Next, the City asserts that the Hamar/McCammon Petitioners lack standing under SEPA to challenge the September 27, 2013 FEIS prepared in conjunction with the ordinances challenged in the instant case because they failed to exhaust administrative remedies by appealing the FEIS.[26] This is a more complex question because the Hamar/McCammon Petitioners allege that the City denied appellants Anderson and Rogers' request to add additional appellants.[27] Proposed Exhibit A39 includes a letter dated the same day as Anderson's timely appeal for the FEIS which, *inter alia,* makes such a request without specifying the name of parties who desired to join the appeal. Many of these documents are admitted to the record pursuant to the Order on Motions to Supplement (below). The City does not address the Hamar/McCammon contention that it was denied the opportunity to join the Anderson appeal of the FEIS, contending instead that these petitioners should have filed their own appeal. The Board is persuaded that the Hamar/McCammon Petitioners have demonstrated an effort to avail themselves of administrative remedies by requesting, through Lowell Anderson, to be added as appellants.

The Board finds that, construing the limited record in favor of the non-moving party, the City has not carried its burden to show that the Hamar/McCammon Petitioners failed to exhaust an **available** administrative remedy.

Injury to Interest Protected by SEPA

The Central Board has long held that petitioners asserting SEPA standing must also satisfy the statutory provisions in the State Environmental Policy Act, which define the basis for appeal of a SEPA determination.[28]

The Court of Appeals in *Trepanier* described a two-part test to establish standing – the Trepanier test – by which a "person aggrieved" can obtain judicial review under SEPA:

> The courts apply a 2-part test in determining whether a person or entity has standing to challenge a SEPA determination. First, the interest that the

[26] City's Dispositive Motion Regarding Standing at 8-9.
[27] Hamar/McCammon Response to Dispositive Motions at 3.
[28] *See e.g.*, *Davidson Serles v. City of Kirkland*, CPSGMHB Case No. 09-3-0007c, Order on Motions (June 11, 2009) at 11.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

> petitioner is seeking to protect must be "'arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question"[29]. . . Second, the petitioner must allege an "'injury in fact,'" *i.e.*, that he or she will be "specifically and perceptibly harmed" by the proposed action.[30]

Further, when a person alleges a threatened injury, as opposed to an existing injury, he or she must show an immediate, concrete, and specific injury to him or herself.[31] If the injury is merely conjectural or hypothetical, there can be no standing.[32]

Positions of the Parties

The Blair Petitioners contend that RCW 36.70A.280(2)[33] allows the Board to recognize SEPA standing based on APA standing under RCW 34.05.530, **in lieu** of participation and exhaustion of administrative remedies, if the petitioners satisfy the requirement to show injury to a SEPA-protected interest.[34] The City replies that the *Trepanier* test is distinct from the exhaustion requirement.[35] The Board agrees with the City. It can find no authority to support the proposition that *Trepanier* intended to lay down an *alternative* test for standing. Rather, in those narrow circumstances outlined by the court in *Citizen*,[36] the Board and Courts may use the *Trepanier* test to insure that petitioners granted APA standing under RCW 34.05.530 have at least asserted an injury to a SEPA-protected interest. In *State v. Crediford,* the Washington Supreme Court said "…we are obliged to construe the statute in a way that is consistent with its underlying purpose and

---

[29] *Trepanier v. Everett*, 64 Wn. App. 380, 382, 824 P.2d 524, 1992 Wash. App. LEXIS 66 (Wash. Ct. App. 1992) (citing *Save a Valuable Env't v. Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978)).
[30] *Id.* (citing *Concerned Olympia Residents*, 33 Wn. App. 677, 683, 657 P.2d 790 (1983)).
[31] *Id.,* citing *Roshan v. Smith*, 615 F. Supp. 901, 905 (D.D.C. 1985).
[32] *Id.,* citing *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 688-89, 37 L. Ed. 2d 254, 93 S. Ct. 2405 (1973).
[33] "A petition may be filed only by: . . . (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; . . . or (d) a person qualified pursuant to [the Administrative Procedures Act, as set out at] RCW 34.05.530."
[34] Blair Petitioners' Response to Dispositive Motion at 5-7.
[35] Respondent City of Monroe's Reply Regarding Dispositive Motion at 3.
[36] "(1) whether administrative remedies were exhausted; (2) whether an adequate remedy was available; (3) whether adequate notice of the appeals procedure was given; and (4) whether exhaustion would have been futile." *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 26, 785 P.2d 447 (1990).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

avoids constitutional deficiencies."[37] The Board and Courts recognize the need for redress where administrative remedy was absent or inadequate in order to avoid constitutional deficiency. As noted *supra*, the Blair Petitioners have not shown that they lacked an administrative remedy. Where administrative remedy was adequate the Board will not undermine the purpose of the statutory GMA participation and SEPA exhaustion requirements by ignoring them.

The Board finds that the Blair Petitioners cannot use the SEPA injury test to overcome their failure to exhaust *available* administrative remedies and thus cannot satisfy the standing requirements under the RCW 34.05.530.

Summary of Motion to Dismiss

The City's motion to dismiss the Blair Petitioners for lack of GMA standing is **denied**.

As to SEPA standing, except in extraordinary circumstances where petitioners show an inadequacy in the public notice and participation process, an inadequate administrative remedy, or administrative appeal was futile such that constitutional deficiencies must be cured, SEPA standing requires: (1) participation, (2) exhaustion of remedies, and (3) an injury to a SEPA-protected interest.

Because the Blair Petitioners do not have SEPA standing, they are barred from bringing a challenge to the FEIS. The City's motion to dismiss the Blair Petitioners' SEPA challenge for lack of SEPA standing is **granted. However,** this is something of a moot point as the Blair Petitioners note,[38] because it is not disputed that co-petitioner Anderson has participation standing and exhausted his administrative remedies under SEPA by filing a challenge to the FEIS. The City has not challenged Mr. Anderson's standing. As in *Your Snoqualmie Valley,*[39] the Board will grant review with respect to the petitioner who has standing.

The Board finds that the Blair/Anderson petition will go forward.

---

[37] *State v. Crediford,* 130 Wn.2d 747, 755, 927 P.2d 1129 (Wash. 1996); *See also In re Det. of Chorney*, 64 Wn. App. 469, 825 P.2d 330 (Wash. Ct. App. 1992) (in order to pass constitutional muster, the statute must satisfy the requirements of due process).

[38] The Blair Petitioners' Response to Dispositive Motion at 1.

[39] Case No. 11-3-0012 Final Decision and Order (May 8 2012) at 17-19.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

The City has not carried its burden to show that the Hamar/McCammon Petitioners do not have SEPA standing. The City's motion to dismiss the Hamar/McCammon Petitioners for lack of SEPA standing is **denied.**

III. MOTION TO SUPPLEMENT THE RECORD

This matter comes before the Board on the Blair/Anderson Petitioners' Motion to Supplement the Record received April 22, 2014 and the Hammar/McCammon Petitioners' Motion to Supplement the Record filed the same day. The City filed its response on May 2, 2014, and both sets of Petitioners filed replies on May 9, 2014.

RCW 36.70A.290(3) states: "The Board shall base its decision on the record developed by the city, county, or state . . . ." The challenged city, county, or state government agency is required to submit an Index listing "all material used in taking the action which is the subject of the petition for review, **including materials submitted in public comment**." WAC 242-03-510(1). Then the Board decides the case based on the parties' briefs and legal arguments, referencing exhibits that are contained in the record of the government's public process.

WAC 242-03-565 permits the filing of motions to allow for evidence that supplements what is in the Index, providing:

> **Generally, the board will review only documents and exhibits taken from the record developed by the city, county, or state in taking the action that is the subject of review by the board** and attached to the briefs of a party. A party by motion may request that the board allow the record to be supplemented with additional evidence.
>
> (1) A motion to supplement the record shall be filed by the deadline established in the prehearing order, shall attach a copy of the document, and **shall state the reasons why such evidence would be necessary or of substantial assistance to the board** in reaching its decision, as specified in RCW 36.70A.290(4). The board may allow a later motion for supplementation on rebuttal or for other good cause shown.

(Emphasis added).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

The burden is on the moving party to demonstrate the evidence they wish to add is necessary or of substantial assistance to the Board. To satisfy this burden, the moving party should explain what is in the evidence that makes it relevant, how it is not available elsewhere in the record, and why consideration of the additional evidence would be necessary or particularly helpful to the Board. Proposed additions to the record "[t]o the extent [they] were **submitted to the jurisdiction as a part of the jurisdiction's proceedings prior to the challenged action** . . . are presumed admissible subject to relevance." WAC 242-03-510(3) (emphasis added).

Blair/Anderson Motion to Supplement

Petitioners Blair/Anderson, joined by Hamar/McCammon[40] move to supplement the record with various documents and correspondences related to the 2010-2012 legislative and environmental review process ultimately leading up to the adoption of the challenged action, including the March 29, 2012 Blair family comment letter and the City of Monroe Rezone Webpage. Although the City objects, the Board notes that the City has attached the comment letter to its own dispositive motion.[41] As regards most of the other materials, the City primarily objects to documents submitted prior to 2013.[42] As the Board noted in the preceding discussion regarding the Blair Petitioners' GMA standing, the City's own documents consistently list the East Monroe Development Group Comprehensive Plan Amendment and Rezone as "Continued from 2012," using reference numbers from 2011 (CPA 2011-01) and 2012 (RZ2012-01).[43]

The Court of Appeals in *Clark County v. W. Wash. Growth Management Hearings Bd.*[44] supported the board's authority to "reevaluate all the evidence in the record," including not only the county's index supporting its immediate resource lands designations (2007) but also the record of the previous long-term designations (2004). The Court rejected the

[40] Hamar/McCammon Motion to Supplement at 3-5; Hamar/ McCammon Reply at 3-4.
[41] Blair/Anderson Motion to Supplement the Record at 1 and Attachment A to same.
[42] Respondent City of Monroe's Response to Motions to Supplement the Record at 1.
[43] *See, e.g.,* Exs. 62, 64, 65, 69, 70, and 71: 2013 Planning Commission Agendas.
[44] 161 Wn. App. 204, 235, 254 P.3d 862 (2011), *vacated in part on other grounds,* 177 Wn.2d 136, 298 P.3d 704 (2013).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

County's argument that the Board may "consider only the portion of the evidentiary record highlighted by the County and is precluded from considering the entire evidentiary record."[45] Such restriction "would render meaningless the Growth Board's mandate to determine GMA compliance '*in view of the entire record before the board.*'"[46]

Accordingly, **the Board finds** that all documents from the City of Monroe's Index of the Record submitted October 16, 2012, in GMHB Case No. 12-3-0007 should be included as part of the record in the present case.

The Blair/Anderson Petitioners also move to include a number of scientific reports and handbooks authored by state and federal agencies and/or research institutions, outlined in the supplementation table below, all of which were widely available during the 2010-2013 process.[47] The City counters that the petitioners failed to submit these documents for review [in the 2013 process] and that Best Available Science is not a relevant consideration where the Board is not reviewing the City's designation of critical areas.[48] While the City may be technically correct that "best available science" as defined in WAC 365-195-900 is only specifically required for the designation of critical areas, it misses the crucial point that the scientific documents requested by the Petitioners were both widely available and of exactly the type the City would have been expected to consult in meeting its obligation to insure that all environmental impacts were adequately considered under SEPA.

The Board finds the requested scientific reports will be of substantial assistance in determining whether the challenged actions comply with GMA and SEPA.

Hamar/McCammon Motion to Supplement

Petitioners Hamar/McCammon move to supplement the record with a LIDAR map of the East Monroe property, 1999 Topographical Survey and aerial photograph Figures 1-5.[49] To the extent that original versions of the petitioners' overlay figures existed and were

[45] 161 Wn. App. at 235-36.
[46] 161 Wn. App. at 236, citing RCW 36.70A.320(3) (emphasis in original).
[47] Blair/Anderson Motion to Supplement at 2-4.
[48] Respondent City of Monroe's Response to Motions to Supplement at 5-7.
[49] Exhibit H1, Hamar/McCammon Motion to Supplement at 2.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

considered by the City during the 2010-2013 SEPA process, **the Board finds** that these documents are appropriately part of the record.

Petitioners also move to include Exhibit H2, a 1999 photograph of floodwaters in the East Monroe area, which Petitioners state "only recently came into our possession." Not only is the Board unable to notice definite landmarks that would make the photographs useful for comparison purposes, the recent surfacing of the photograph almost certainly means it was not considered by the City.

The Board finds that Exhibit H2 will not be of substantial assistance to the Board.

Similarly, Hamar and McCammon move to include evidence that the City required buttressing of an East Monroe residence due to slope instability in 2008. Petitioners have not shown that Exhibit H3 and H3a were submitted to the City for consideration prior to the challenged action and may not do so now.[50] Similarly, they move to supplement the record with an April 2014 *draft* Landslide Hazard Areas map currently before the Snohomish County Council in the wake of the Oso landslide. While the Board is extremely sensitive to the now-heightened concerns related to unstable slopes, it is nevertheless inappropriate to supplement the record with specific materials that could not have been considered by the City prior to the enactment of the challenged ordinance.

The Board finds that Exhibit H3, H3a and H13 are not relevant in the instant case.

IV. ORDER

The City's motion to dismiss the Blair Petitioners' GMA challenge is **denied**.

The City's motion to dismiss the Blair Petitioners for lack of SEPA standing is **granted.**

The City's motion to dismiss the Hamar/McCammon Petitioners for lack of SEPA standing is **denied.**

---

[50] WAC 242-03-565 reads:

> Generally, the board will review only documents and exhibits taken from the record developed by the city … in taking the action that is the subject of review…
>
> ***
>
> (2) Evidence arising subsequent to adoption of the challenged legislation is rarely allowed except when support by a motion to supplement showing the necessity of such evidence to the board's decision concerning invalidity.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

The Supplementation Table below indicates the ruling of the Board with respect to each of the documents requested for supplementation of the Record.

Supplementation Table

Document	Petitioners	City	Order
Blair Family Comment Letter, March 29, 2012 & City of Monroe East Monroe Rezone webpage	Blair/Anderson request	Comment Letter Attached to City's Motion to Dismiss	Admitted
DOE email to Lowell Anderson Dec 10, 2013	Blair/Anderson request	In transcript of December 26, 2014 City Council Mtg	Already in record as Exhibit 85
NMFS Biological Opinion	Blair/Anderson request	Agrees	Admitted
DNR Geologic map of Monroe 7.5' quadrangle	Blair/Anderson request	Objects	Admitted
All documents from the City of Monroe's Index of the Record submitted October 16, 2012 in GMHB Case No. 12-3-0007	Exhibits A93-A120 as requested by Blair/ Anderson and Hamar/McCammon[51]	Objects	Admitted
Snohomish River Basin Salmon Conservation Plan June 2005	Blair/Anderson request	Objects	Admitted
DOE Focus on Flood Plan management Assistance Program March 2008	Blair/Anderson request	Objects	Admitted
NOAA & NMFS Health Floodplains January 2011	Blair/Anderson request	Objects	Admitted
FEMA Region 10 Floodplain Habitat Assessment & Mitigation Regional Guidance for the Puget Sound Basin August 2013	Blair/Anderson request	Objects	Admitted
Ecological Issues in Floodplains and Riparian Corridors, UW Center for Streamside Studies, July 2001	Blair/Anderson request	Objects	Admitted

[51] Hamar/ McCammon Motion to Supplement at 4-5.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

WDFW Landscape Planning for Washington's Wildlife: Managing for Biodiversity in Developing Areas 2009	Blair/Anderson request	Objects	Admitted
DOE & WDFW Wetlands in Washington Vol. 1, March 2005	Blair/Anderson request	Objects	Admitted
DOE & WDFW Wetlands in Washington Vol. 2, April 2005	Blair/Anderson request	Objects	Admitted
CTED Critical Areas Assistance Handbook, Updated January 2007	Blair/Anderson request	Objects	Admitted
LIDAR map of East Monroe property, 1999 Topographical Survey and aerial photograph Figures 1-5	Hamar/McCammon request	Objects	Original 20x33" versions Admitted
Photo of East Monroe Property in 1995 flood.	Hamar/McCammon request	Objects	Denied
"Hazards of a Steep Slope" Exhibits H3, H3a	Hamar/McCammon Request		Denied Unless part of record for 12-3-0007
April 2014 Draft Snohomish County Hazard Areas[52]	Hamar/McCammon Request	Objects	Denied

All supplemental exhibits which a party relies upon for its arguments shall be attached to the Hearing on the Merits briefs pursuant to WAC 242-3-620 and 565.[53]

The Board takes official Notice of Monroe Municipal Codes, the Monroe Shoreline Master Program and the Snohomish Countywide Planning Policy pursuant to WAC 242-03-630(4).[54]

---

[52] Exhibit H13: Hamar/McCammon Reply on Motion to Supplement at 2-3.

[53] "All evidence from the record which is to be relied upon at the hearing shall be submitted to the board and to the other parties with their briefs." "[The presiding officer may require] copies of supplemental exhibits to be attached also to the hearing on the merits brief."

[54] "The board or presiding officer may officially notice:
… (4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

DATED this 23rd day of May, 2014.

Cheryl Pflug, Board Member

Margaret Pageler, Board Member

/Not available for signature/
Raymond Paolella, Board Member

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253